

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DNA GENOTEK INC., a Delaware
Corporation,

Plaintiff,

v.

SPECTRUM SOLUTIONS L.L.C., a Utah
Limited Liability Company; and
SPECTRUM DNA, a Utah Limited
Liability Company,

Defendants.

Case No.: 16-CV-1544 JLS (NLS)

**ORDER DENYING PLAINTIFF'S EX
PARTE MOTION TO USE
DISCOVERY FROM PARALLEL
CASE**

(ECF No. 39)

Presently before the Court is Plaintiff DNA Genotek Inc.'s *Ex Parte* Motion to Use Discovery from Parallel Case (*Ex Parte* Mot., ECF No. 39), as well as Defendants Spectrum Solutions L.L.C. and Spectrum DNA's Opposition to (ECF No. 40) Plaintiff's *Ex Parte* Motion. Having considered the parties' arguments and the law, the Court **DENIES** Plaintiff's *Ex Parte* Motion. (ECF No. 39.)

BACKGROUND

On July 30, 2015, Plaintiff filed an action against Defendants in the United States District Court for the District of Delaware (the Delaware Action), alleging infringement of

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1 United States Patent No. 8,221,381 B2 (the '381 Patent). (*Ex Parte* Mot. 2,¹ ECF No. 39
 2 (citing Compl., *DNA Genotek, Inc. v. Spectrum DNA*, No. 1:15-cv-00661-SLR (D. Del.
 3 Filed July 30, 2015), ECF No. 1).)

4 On June 16, 2016, Plaintiff filed an action against Defendants in this Court, alleging
 5 infringement of United States Patent No. 9,207,164 B2 (the '164 Patent). (*See generally*
 6 Compl., ECF No. 1.) Plaintiff explains that the two actions involve related patents, the
 7 same accused products, and the same parties:

8 The '164 patent and '381 patent are part of the same patent
 9 family and have substantially identical specifications. The
 10 accused products in the present action are the same saliva
 11 collection devices that are accused in the Delaware Action. The
 12 parties in the Delaware Action and the action before this Court
 are the same.

13 (*Ex Parte* Mot. 2–3, ECF No. 39.)

14 On June 21, 2016, Plaintiff filed a motion for a preliminary injunction. (*See*
 15 *generally* ECF No. 12.) Defendants filed a motion to stay pending *inter partes* review on
 16 July 21, 2016. (*See generally* ECF No. 30.)

17 ANALYSIS

18 Plaintiff asks the Court for permission to use discovery from the Delaware Action
 19 in this case. (*See Ex Parte* Mot. 2, 4, ECF No. 39.) Specifically, Plaintiff wishes to use
 20 discovery from the Delaware Action in its reply memorandum in support of its motion for
 21 a preliminary injunction to bolster its argument that it is likely to suffer irreparable harm
 22 as a result of Defendants' ongoing infringement. (*See id.* at 3.) Plaintiff argues that
 23 "[u]tilizing discovery already provided in the Delaware Action falls squarely within this
 24 Court's authority to manage its docket in order to obtain inexpensive and speedy results."
 25 (*Id.* at 5.) Plaintiff also promises to honor the Outside Counsel Eyes Only designation of
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 28 ¹ Pin citations to docketed materials refer to the CM/ECF page numbers electronically stamped at the top
 of each page.

1 the Delaware Action discovery and has no objection to Defendants filing a surreply brief.
2 (*Id.*)

3 Defendants oppose Plaintiff's *Ex Parte* Motion on the grounds that "Plaintiff could
4 easily have asked to use this additional discovery at any time before it filed its motion here,
5 before Defendants conducted extensive discovery, or, indeed, before Defendants filed their
6 opposition [to the preliminary injunction motion]." (Opp'n 7, ECF No. 40.)

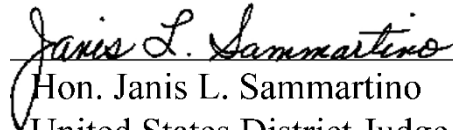
7 The Court agrees with Defendants that Plaintiff's request is untimely. *See, e.g.,*
8 *Peregrine Semiconductor Corp. v. RF Micro Devices, Inc.*, No. 12CV911-IEG WMC,
9 2012 WL 2068728, at *7 (S.D. Cal. June 8, 2012) ("[I]t is not proper for a party to submit
10 new evidence in a reply brief.") (citing *DocuSign, Inc. v. Sertifi, Inc.*, 468 F. Supp. 2d 1305,
11 1307 (W.D. Wash. 2006)). Accordingly, the Court **DENIES** Plaintiff's *Ex Parte* Motion.

12 CONCLUSION

13 In light of the foregoing, the Court **DENIES** Plaintiff's *Ex Parte* Motion. (ECF No.
14 39.)

15 **IT IS SO ORDERED.**

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17 Dated: August 11, 2016


Hon. Janis L. Sammartino
United States District Judge